

The 16th July, 1982

No. 9(1)82-6 Lab./6226.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s A. K. Packaging Plot No. 25 DLF Industrial Area, Faridabad.

BEFORE SHRI M. C. BHARDWAJ,
PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL, HARYANA, FARIDABAD.

Reference No. 71/81.

Between

THE WORKMEN AND THE MANAGEMENT
OF M/S A. K. PACKAGING, PLOT NO. 25,
DLF. INDUSTRIAL AREA, FARIDABAD.

Present:—

Shri Mohit Kumar, for the workmen.
Shri J. S. Saroha, for the management.

AWARD

The State Government of Haryana referred the following dispute between the management of M/s A. K. Packaging, Plot No. 25, D.L.F. Industrial Area, Faridabad and its workmen by order No. ID|FD|46-80|11458 dated 11th March, 1981, to this Tribunal, for adjudication in exercise of powers conferred by clause (d) of subsection (1) of Section 10 of the Industrial Disputes Act, 1947:—

Whether the closure of M/s A. K. Packaging, Plot No. 25, D.L.F. Industrial Area, Faridabad with effect from 7th February, 1981 in pursuance of their closure notice dated 9th December, 1980 is legal and justified? If not, to what relief the workmen are entitled?

Notices of the reference were sent to the parties who appeared and filed pleadings. The following issues were framed by my order dated 21/1/1982:—

- (1) Whether the reference is bad in law as per preliminary objection.
- (2) Whether the closure of M/s A. K. Packaging, Plot No. 25, D.L.F. Industrial Area, Faridabad with effect from

7th February, 1981 in pursuance of their closure notice dated 9th December, 1980 is legal and justified? If not, to what relief the workmen are entitled

ISSUE NO. 1 :

The parties did not lead any evidence on this issue the same being legal issue and adduced their arguments. It was contended by the Learned representative for the management that the reference was had in law because it had been held a number of judgements that the right to close down the business was a fundamental right. The Tribunal had no jurisdiction to go behind the fact of closure and further that the motive of the management for closing down the business was not concerned of the Industrial Tribunal. He cited 1957 I-LLJ page 235 Supreme Court, 1969 I-LLJ page 242 Supreme Court, 1960 II-LLJ page 4 Supreme Court, 1967 I-LLJ page 427 Supreme Court, 1978 II-LLJ page 527 Supreme Court and 1979 S.C.C. (L.N.S.) page 343. On the hand Learned representative of the workman argued that the Tribunal had got jurisdiction to adjudicate upon the matter of reference. He also cited 1979 S.C.C. (L.N.S.) page 340.

The present reference was about the legality and justification of closure of the factory with effect from 7th February, 1981. The factum of closure was admitted in the pleadings of the parties. Therefore I presume that the factory was still closer. Reverting to argument advanced on behalf of the parties closure of undertaking figures in Section 25-FFA and 25-FFF, these provisions relate to 60 days notice to be given on intention to close down any undertaking and payment of compensation to the workman in case of closing down of undertaking. No provision has been laid down in any of the provisions on closure of undertaking. In 1978 II-LLJ page 527, the Supreme Court held:—

Rejecting the contention of the employer that right to close down business can be equated or placed at par as high as the right not to start and carry on a business at all and the contention of the unions that a right to close down a business once he starts it.

If he has such a right as obviously he has, it cannot but be a fundamental right embedded in the right to carry on any business guaranteed under Art. 19(1) (g) of the Constitution. In one sense the right does appertain to property

but such a faint over lapping of the right to property engrafted in Art. 19(1) (f) or Art. 31 must not be allowed to cast any shade or eclipse on the simple nature of the right as noticed above.

In 1957 I-LLJ page 235, it was held by Supreme Court Where the business has been closed and it is either admitted or found that the closure is real and bona fide, any dispute arising with reference there to would fall outside the purview of the Industrial Disputes Act and that will he fortiori so, if a dispute arises if one such could be conceived after the closure of the business between the quondam employer and employees.

But this does not mean that to refer an industrial dispute which arose during the existence of the concerned industry, the industry must be also in existence at the time of reference of such dispute. The power of the State to make reference must be determined with reference not the date on which it is made but to the date on which the right which is the subject matter of the dispute arises and that the machinery provided under the Act would be available for working out the right which had accrued prior to the dissolution of the business.

In 1969 I-LLJ page 242, while retreating 1957 I-LLJ page 235, it was held by Hon'ble Supreme Court. "It has been laid down in a series of decision that it is not for industrial tribunals to enquire into the motive for closure to find out whether the closure is justified or not.

Once the tribunal finds that an employer has closed its factory as a matter of fact it is not concerned to get into the question as to the motive which guided him and to come to a conclusion that because of the previous history of the dispute between the employer and the employees the closure was not justified. Such a closure cannot give rise to an industrial dispute."

In 1967 I-LLJ page 127 Supreme Court, it was held while it is open to be appropriate Government to refer the dispute or any matter connected therewith for adjudication the tribunal must confine its adjudication to the points of dispute referred to and matters incidental thereto. In other words the tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points

specifically mentioned and anything which is incidental thereto.

In 1979 Supreme Court Cases (L&S) page 343, it was held propriety of justification of closure of business in fact and truly effected cannot raise an industrial dispute.

After going through the above cited judgements one can safely reach the conclusion that justification of the closure was not a moot point for adjudication. Therefore, I decide this issue in favour of the management and reference fails on the sole ground.

While answering the reference. I give my award that the workmen were not entitled to any relief.

Dated : 9th June, 1982.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 594, Dated 11th June, 1982

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

N. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)82-6 Lab. 6233.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Titan Engineering Company Sector 24 Plot No. 191, Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 159/81

between

SHRI B. REGHUVARAN PILLAI WORKMAN
AND THE MANAGEMENT OF M/S TITAN
ENGINEERING COMPANY, SECTOR-24,
PLOT NO. 191, FARIDABAD.

Present:—

Shri Mohit Kumar Bhandari, for the workman.

Shri Ram Saroop Arora, for the management.

AWARD

The State Government of Haryana referred the following dispute between the workman Shri B. Reghuvaran Pillai and the management of M/s Titan Engineering Company, Sector-24, Plot No. 191, Faridabad, by order No. ID(FD) 4081/27974 dated 4th June, 1981, to this Tribunal, for adjudication in exercise of powers conferred by clause (d) of sub section (1) of Section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri B. Reghuvaran Pillai was justified and in order? If so, to what relief is he entitled?

Notices of the reference were issued to the parties who appeared and filed their pleadings. The following issues were framed by my order dated 8th September, 1981 :—

- (1) Whether the workman abandoned his job of his own? If so to what effect?
- (2) Whether the termination of services of Shri B. Reghuvaran Pillai was justified and in order? if so, to what relief is he entitled?

The management examined Shri Anmol Singh, partner, as MW-1. The workman examined himself as his own witness. Arguments were heard.

ISSUE NO. 1:

MW-1 deposed that the workman absented himself with effect from 14th February, 1981. He was issued call letters Ex. M-1 and Ex. M-2 by registered A.D. Post. The letters were received back undelivered with remarks of the post man Ex. M-3 and Ex. M-4. Postal receipts were Ex. M-5 and M-6. His name was struck off on 5th March, 1981. He was informed,—vide letter Ex. M-7. He further stated that photo copies of attendance register were Ex. M-8 and M-9. No workman was ever laid off in the factory. The address of the workman was taken from the Provident Fund Form, copies of which were Ex. M-10 and M-11. Leave applications of the workman were Ex. M-12 to M-16. From these applications the address of the workman was taken. The full and final account of the workman was sent by money-order which was received back undelivered. Copies of the same were Ex. M-17 and M-18. Postal receipt was Ex. M-19. Copies of the envelopes received

back were Ex. M-20 to M-23. In cross examination, he replied that the leave applications were received by him through supervisor Shri Barister Singh. Shri Kalra was working part time in the factory but he did not receive leave applications. There was no procedure of entering the leave applications in the register. However, a slip from leave form could be given to the workman in case so demanded. No record of the leave applications was maintained in the factory. He did not know if the workman had given his address at the time of entering into services. He denied the suggestion that on 14th February, 1981, the workman had submitted his leave application. He did not know if the workman was ill from 15th February, 1981 to 24th February, 1981. He further replied that the attendance card was issued to the workman but there was no direction if the card was to be retained by the workman or management. He denied the suggestion that the attendance card for the month of February and March were taken back by the management. He also denied the suggestion that the workman was marked lay off from 25th February, 1981 to 28th February, 1981. In the attendance register, the workman was marked absent from 14th February to 28th February 1981. He further admitted that it may be possible that on 24th word P was turned into A by mistake because it was in red ink. Therefore there was no question of his being present. The concerned workman deposed that on 14th February, 1981 he had fallen ill after working for one hour. After getting sanctioned his leave application, he handed over the same to the manager. The Manager sanctioned the same. There was no prescribed form for leave applications and no slip for sanction was issued. He further stated that he was member of E.S.I. Photo copy of E.S.I. Card was Ex. W-1. He had gone to E.S.I. Dispensary on 14th February, 1981 but was not issued medicines and told to bring form 37 from the company. When he went to the company for form 37, it was told that form was not available in the company. In these circumstances, he got treatment from private doctor on 15th February, 1981. Copy of medical certificate was Ex. W-2. He had sent leave application for 10 days to the management which was sanctioned. He went for duty on 25th February, 1981 along-with fitness certificate Ex. W-3. He worked for about one hour on that day but was told that there was no work for him of the rest day, he was laid off. Copy of attendance card was Ex. W-4. He was also marked lay off on 26 to 28th February, 1981. Card was taken from him

on the next day. He was marked lay off upto 5th March, 1981 which was shown in the attendance card. His service was terminated after that. He had sent letter copy Ex.W-5 to the company on 6th March, 1981. A.D. Card was Ex. W-5|2 and postal receipt was Ex. W-5|1 which was received undelivered. He further stated that address on Ex. M-16 was not correct nor it was no Ex. M-11 to M-15 but the signatures on documents were his. The absence of Ex. M-8 and M-9 after 13th February, 1981 were incorrect. He never received letters Ex. M-4, M-13 and M-20 to M-23 nor any money-order. He did not receive Ex. M-1 to M-7. In cross-examination, he replied that no leave form was issued by the management nor a sanction slip was issued. He admitted his signatures on Ex. M-10 and M-11. He admitted that on the leave from there was column of address, but it was not filled. He replied that no notice of lay off was put on the notice board but entry was made in the attendance card. He got the card photostet because he had doubt in his mind that his service might not be terminated illegally.

The learned representative of the management argued that the workman was absent from 14th February, 1981 to 28th February, 1981 without any leave. He was sent call letters and finally his name was struck off. He was also sent retraction compensation but all the letters and money-order were received back undelivered. He pointed out that the letters were refused by the workman. On the other hand, the learned representative for the workman argued that the workman had attended the factory on 14th February, 1981. When he fell sick he attended the E.S.I. Dispensary but asked to produce form 37 which was exhibited on W-1, as the form was not supplied by the management, therefore, workman got his treatment from a retired P.C.M.S., MBBS, Doctor. He remained sick for about 10 days when he reported on duty on 25th February, 1981 he was laid off which was shown in the attendance card Ex. W-4. His name was struck off illegally without any reason.

I have gone through the claim statement in which the same version was given in para No. 2: The workman stated that he attended factory on 14th February, 1981 for one hour when he felt unwell. Then in the next para he gave his version about his attendance of ESI Dispensary and demanded of form 37 from the

management. In the written statement both the paras were denied to be correct. In para No. 6 of the claim statement, he stated that he was laid off from 25th February, 1981. It was also mentioned that the card was deposited with the management on 1st March, 1981 as per practice. A fresh card was issued to him on 1st March, 1981 and he was also marked lay off till 6th March, 1981. This card was also not returned to the workman on 6th March, 1981. This para was also denied as wrong. There was no reply about the issue or deposit of attendance card. Further it was repeated that the workman remained absent from 14th February, 1981 to 5th March, 1981 in the written statement. I have gone through the call letters and postal receipts. I find that the letters were sent by post but the same were received back undelivered as was evident from Ex. M-4, M-13, M-21 to M-23. Two letters were sent to his home address in district Quilon. Both these letters were returned back undelivered with the remarks of the post man "Add left. Part Add", initial with date 26th February, 1981. I find that on Ex. M-4 letter refused was added later on with different hand whereas there is no such word on the address of Ex. M-23, although the remarks of the post man is same. Initial and date being also the same. The other remarks along with date was identical. As regards the other letters they were sent on his local address. The remarks of the post man were that there no such person was available on this address. However on Ex. M-3 I find a report in Hindi that on repeated calls the addresses was not available. It was further added refuse to receive. It was rightly pointed out by the representative of the workman that the language created a doubt about the remark refuse to receive after the other remark. The same was the fate of the money-order. It was also never received by the workman. I have gone through the photo copies of the attendance register Ex. M-8 and M-9, the workman was shown absent with effect from 14|2 to 5th March, 1981 but the attendance card copy Ex. W-4 gave different story. The workman was marked leave on 14|2 whereas he was marked absent from 15|2 to 24|2. On 25 to 28 he was marked lay off. Incidentally some initial appeared from 15|2 to 28|2. I do not find any reason as to why the management did not reply the version that lay off was marked in the attendance card and the same was deposited on 1st March, 1981 as given in the claim statement.

The management should have denied the version in the written statement and also placed on record. The attendance cards for the months of February and March, controvert the version of the workman in case he was not marked lay off. As regards the illness from 14th February, 1981, I find the remark on the attendance card "Form 37 required". This was dated 14th February, 1981. It goes to show that the workman went to E.S.I. Dispensary on 14th February, 1981. From the duplicate medical certificate from Dr. Surender Dua, MBBS, I gather that the concerned doctor was examined him on 15th February, 1981 and given fitness certificate on 24th February, 1981. From my above discussion, I find that the workman attended the factory on 25th February, 1981 to 28th February, 1981 when he was marked lay off. The workman also placed on record the original letter Ex. W-5 sent to the management by registered A.D. post. The same was refused by the management with the reason best known to it. It seems the management might be aware of what the letter could have contained. I find this case to be a case of unfair labour practice. The workman had never an intention of abandonment of the job rather he was sick on 14/2 which was also corroborated by attendance card Ex. W-2. He attended the factory from 25 to 28 and marked lay off. In the circumstance, I decide this issue against the management.

ISSUE NO. 2 :

I have already discussed the evidence as well as documentary evidence in the above issue. The only result of my discussion above comes to that there was no justification in terminating of the service of the workman. Therefore he was entitled to his re-instatement with full back wages and with continuity of service.
Dated : 8th June, 1982.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 599, dated 11th June, 1982.

Forwarded (four copies) to the Secretary to Government Haryana Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)82-6. Lab. 6242.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Indian Smiths (India) Industrial Area, Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER INDUSTRIAL TRIBUNAL HARYANA, FARIDABAD.

Reference No. 190/1981.

between

SHRI ILYAS WORKMAN AND THE MANAGEMENT OF M/S. INDIAN SMITHS (INDIA) INDUSTRIAL AREA, FARIDABAD.

Present:—

Shri Mohit Kumar, for the workman.

Shri K. P. Aggarwal, for the management.

AWARD

The State Government of Haryana referred the following dispute between the workman Shri Ilyas and the management of M/s Indian Smiths (India) Industrial Area, Faridabad, by order No. ID/FD/71/81/30600 dated 23rd June, 1981, to this Tribunal, for adjudication in exercise of powers conferred by clause (d) of sub-section (1) of Section (10) of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Ilyas was justified and in order? If so, to what relief is he entitled?

Notices of the reference were issued to the parties who appeared and filed their pleadings. The following issues were framed by my order dated 5th October, 1981 :—

- (1) Whether the workman absented himself? If so to what effect?
- (2) Whether the termination of services of Shri Ilyas was justified and in order? If so, to what relief is he entitled?

The management examined Shri Surender Singh Partner as MW-1 and Shri Gian Chand Manager as MW-2. The workman examined Shri Bhagwan Singh Rawat as WW-2 in addition to himself. Arguments were heard.

The Learned Representative for the management argued that it was a case of abondonment of service by the workman. The action was taken under clause 16 (4) of the Standing Orders. He also argued that it was not an action of the management rather it was that of the workman in absenting which amounted to abondonment of service. On the other hand Learned representative of the workmen argued that the workman was on leave as he submitted his certificate and was not allowed duty when he came alongwith his fitness certificate. The workman had explained his absence. Therefore, the action of the management in terminating his service was prejudicial action and bad in law.

In evidence MW-1 stated that the appointment letter of the workman was Ex. M-1 which contained signature of the workman. The workman was Shaperman. He was absent from 24th March, 1981 without any intimation or permission. A registered call letter was sent to him on 29th March, 1981, copy of which was Ex. M-2 and postal receipt was Ex. M-3. His name was struck off from roll on 8th April, 1981. Model Standing Order copy Ex. M-4 was applicable in the factory. In cross examination he replid that leave for one or two days was sanctioned by the engineer but for longer period, the application was forwarded by the engineer to him. He further replied that leave record was maintained in the factory. There was no receipt of application in the record brought by him. In attendance register, absence was shown from 24th March to 31st March. The workman was on leave in the first half of 24th March, 1981 and was present in the second half. He denied the suggestion that the workman had gone after three days leave. MW-2 stated that the workman became absent from 24th March, 1981. Letter Ex. M-2 was to him. He did not report on duty upto 8th April, 1981 when his name was struck off. The workman did not inform about his absence to the management. He stated that leave application was submitted to the technical incharge who passed on to him. A call letter was sent as he further replied that he himself was on half day leave on 24th March, 1981 and in the other half day he attended the factory. The name of the

workman was struck off after marking him absent up to 14th April, 1981. He had brought the attendance register with him. The concerned workman deposed that he was appointed on 1st January, 1976 as shaperman. His service was terminated on 27th March, 1981. He fell ill on 23rd March, 1981. Shri Gian Chand had come to him during illness. He had got leave application written through Shri Bhagwan Singh, because he was illiterate. During his illness he remained in village Sophta situated 12/13 miles away from the factory. He was suffering from malaria and was treated by a Doctor in the village. Medical certificate was Ex. W-1. He reported for duty on 27th March, 1981 along with fitness certificate. Shri Gian Chand did not allow him duty. He insisted of E.S.I. certificate instead of medical certificate produced by him. He did not receive copy Ex. M-2. In cross-examination, he replied that his signature on Ex. M-1 resemble his signature but he was not definite if the signatures were his own. The leave application was given on half plain paper. His address on Ex. M-2 was correct. Shri Gian Chand asked him to submit the E.S.I. certificate in the presence of Shri Bhagwan Singh, Hare Ram and Amar Mohd. He admitted his signature on Ex. M-5 WW-2. Shri Bhagwan Singh stated that the services of the concerned workman were terminated on 27th March, 1981. He had submitted the leave application on evening of 23rd. He had written application. The application was given to Shri Gian Chand. He was General Secretary of the union. Shri Gian Chand on 27 told him that the management wanted E.S.I. certificate. There was no practice of issue of Slip after sanction or rejection of leave application. In cross examination he replied that leave application was given on full size white paper. Shri Ilyas was covered under E.S.I.

It is admitted that the termination was effected by absence of the workman from duty. Although the version of the workman was that he had submitted leave application initially for three days and remained sick upto 26th March, 1981 whereas according to the management he remained absent upto 14th April, 1981. The version of WW-1 and WW-2 about leave application was also different as the workman stated that he had submitted leave application on half size paper whereas his witness stated that it was on full size. It is admitted fact that no

retrenchment compensation was paid to the workman while striking off his name. Not controversy about the interpretation of term retrenchment was set at rest by the Hon'ble Supreme Court. It has reiterated its earlier verdict given in Delhi Cloth & General Mills Ltd., V/s Shambu Nath, 1978-I-LLJ page 1. To quote the latest verdict in L.R.D. Souse V/s Executive Engineer, Southern Railway and at other (1982-I-LLJ page 330).

"Held, the definition of expression "retrenchment" in S.2(oo) is so clear and unambiguous that no external aids are necessary for its proper construction. Therefore, we adopt as binding the well settled position in law that if termination of service of a workman is brought about any reason whatsoever. It would be retrenchment, except if the case falls within any of the excepted categories. (i) termination by way of punishment inflicted pursuance to disciplinary action. (ii) voluntary retirement of the workman, (iii) retrenchment of the workman on reaching the age of superanuation if the contract of employment between the employer and the workman concerned contains stipulation in that behalf (iv) termination of the service on the ground of continued ill-health Once the case does not fall in any of the expected categories the termination of service even if it be according to automatic discharge from service under agreement would none the less be retrenchment within the meaning of the expression S.2(oo). It must as a corollary follow that if the name of the workman is struck off the roll that itself would constitute retrenchment as held in Delhi Cloth & General Mills Ltd's. case.

The ruling was fully applicable to the facts of the present case about the striking off the name of the workman. Therefore the contention of the Learned representative for the management that it was an action of the workman in remaining absent and thereby abandoning his job, was not sound. As the management has not paid retrenchment compensation while striking off the name of the workman, therefore, the action was bad in law in terminating the service of the workmen. Consequently he remained in service and was

entitled to full wages. Therefore, I pass my award that the workman was entitled to his re-instatement with full back wages and continuity of service.

Dated: 9th June, 1982.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 608 Dated, 11th June, 1982

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Department, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 27th July, 1982.

No. 9(1)82-6 Lab./6604.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of The Gurgaon Central Cooperative Bank Ltd., Gurgaon.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD.

Reference No. 284 of 1980.

between

SHRI LAXMAN SINGH, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S. THE GURGAON CENTRAL COOPERATIVE BANK LIMITED, GURGAON.

Shri Sagar Ram Gupta, for the workman.
Shri Pardeep Sharma, for the respondent management.

AWARD

This reference No. 284 of 1980 has been referred to this Court by the Hon'ble Governor of

Haryana,—vide his order No. ID/GGN/27-78/30483, dated 20th June, 1980, under section 10(i) (c) of the Industrial Disputes Act, 1947, existing between Shri Laxman Singh, workman and the respondent management of M/s. The Gurgaon Central Co-operative Bank Limited, Gurgaon. The term of the reference was:—

Whether the termination of service of Shri Laxman Singh was justified and in order? If not, to what relief is he entitled?

Notices were issued to the parties, after receiving this reference. The parties appeared and file their pleadings. The case of the workman according to the demand notice and claim statement is that he was employed on a permanent post from April, 1976 and his work and conduct were quite satisfactory. The services were terminated on 19th January, 1978 illegally without any enquiry or notice and without implementing the provisions of section 25-F of the Industrial Disputes Act.

The case of the respondent according to the written statement is that the claimant did not come under the definition of section 2(s) of the Industrial Disputes Act, 1947 and not a workman as he was Mini Bank Manager. The workman was on probation for two years and according to the terms and conditions of the appointment the workman was terminated. The work and conduct of the workman was not satisfactory. The workman remained absent from duty from the month of April to August, 1977 and the respondent made the enquiry in the matter by the Development Officer, Palwal and he was held guilty of the charges. The claimant confessed this absence from duty from 12th July, 1977 to 12th August, 1977. The respondent sent the registered letter after receiving the enquiry report and show cause notice dated 10th January, 1978, asking him why disciplinary action should not be taken against him and asked his explanation within a week but as the workman was not present on his duty so the letter received undelivered. The adequate opportunities were given to the claimant, but the claimant did not pay heed towards his service. So the reference is bad and may be rejected.

On the pleadings of the parties, the following issues were framed:—

1. Whether the claimant is a workman under the provisions of Industrial Disputes Act? If so, to what effect?

2. Whether it is case of voluntarily absenting from duty of the respondent by the workman and therefore it becomes a case of voluntarily abandonment of service?
3. Whether a fair and proper domestic enquiry was held in this case? If so, to what effect?
4. Whether the termination of services of the workman is proper justified and in order? If not, to what relief is he entitled?

The parties requested to treat issue No. 1 and 3 as preliminary issue which was acceded and ordered that issue No. 1 & 3 be treated as preliminary issue. But on 16th January, 1978, when there was no evidence taken, the parties withdrew the request to treat issue No. 3 as preliminary issue and also did not lead any evidence for this issue and did not press at the time of arguments.

My findings on preliminary issues is as under:—

ISSUE NO. 1:

The representative of the respondent argued on this issue that the applicant was appointed as Manager of the Mini Bank and was holding the responsible post of a manager. The claimant had his subordinates and used to sanction their leaves and pay their wages. He was all responsible for the appointment and termination of those workmen, work under him. He had the power to give loan upto Rs. 5,000 to the members of the Mini Bank and he does not come under the definition of the workman.

The representative of the workman argued that the workman was appointed,—vide Ex. M-3 at a scale of Rs. 110—4—130/5—225, which is a grade of clerk and not of a manager. The document is filed by the respondent and cannot go beyond it. The workman used to maintain all record with his own hands and there was no subordinate under him. He was just a clerk and not a manager and he comes under the definition of workman.

After hearing the arguments of both the parties I am of the view that the claimant is a workman under section 2(s) of the Industrial

Disputes Act, 1947. He was not a manager but simply a clerk and maintained the record of the bank. Even his pay scale clears the position that he was a workman and not a manager or having a supervisory duty. He has to act according to the instructions of the Bank and Managing Committee of the Mini Bank and every thing is done by the Managing Committee and not by the claimant so he is workman under the definition of the Industrial Disputes Act. The issue is decided in favour of the workman against the respondent. The parties did not press other preliminary issue No. 3 for fair and proper enquiry, so this issue is decided in favour of respondent and against the workman because the workman raised his objection that no fair and proper enquiry was held against the workman, but he gave no evidence and put no arguments on this issue. It means he agrees that the enquiry was made by the respondent.

After hearing the arguments and announcing the verdict in the open court the parties were asked to lead evidence on other issues and the parties led evidence on the rest of the issues and argued.

My findings on these issues are as under:-

ISSUE NO. 2 & 4:

The representative of the respondent argued on this issue that the workman was terminated on 19th January, 1978 as he was habitual absentee and he remained irregular and absent intermittently from the month of April, to June 1977 and from 12th July, 1977 to 12th August, 1977. On the complaint of member of the working committee of primary Co-operative Society Savali, the E.O. Hodel was made the enquiry officer to find out the truth in the complaint. The E.O. Hodel and D.O. Palwal made the enquiry and found the said workman absent from duty from his working place. The workman also admits in writing that he remained absent without information from 12th July, 1977 to 12th August, 1977. The workman was appointed on probation,—vide Ex. M-3 as Secretary of the Mini Bank and according to terms and condition of the appointment letter the work was not found satisfactory and he remained absent from duty continuous for months. As stated by Shri Tikka Ram, E.O. Holdel that the workman often remained absent from duty in the month of April to August, 1977. He has stated in his statement that he used to visit the Mini Bank

and he found him absent from duty and he made this report in this regard,—vide Ex. M-5 to the Development Officer, Palwal. He has also confirmed that on 13th August, 1977, the workman admitted in writing,—vide Ex. M-6 that he was absent from duty from 12th July, 1977 to 12th August, 1977, which he forwarded to the Manager of the respondent bank. Another witness of the respondent Shri K.C. Vishist, Development Officer Palwal as MW-3 has stated that Ex. M-8 is written by him in connection with absence of the workman and this was replied to the letter of Managing Director respondent bank and it was written on the report of E.O. Hodel. He has stated that he visited the Mini Bank several time and he also not found the workman on duty. He further argued that Shri Mani Ram the Present Mini Bank Manager has stated as MW-4 and confirmed that the workman was irregular from the month of April to June, and absent from 12th July, 1977 to 12th August, 1977. He brought the day book-cum-cash book and stated that as per said book the proceedings from 14th July, 1977 to 12th August, 1977 has not written in the said book and no signatures of the claimant on the cash book. He has stated as per rules the cash book has to be signed daily by the Mini Bank Manager, whereas the signatures of the Mini Bank Manager on the cash book from 7th May, 1977 to 12th September 1977 and the cash book was not written from 14th July, 1977 to 12th August, 1977. He further stated that all record including the attendance were in the custody of the workman. He further stated that the workman had made an embezzlement of funds and criminal proceedings were conducted against him. Shri Ram Avtar and members of the working Committee of the Savali Co-operative Society has also come as MW-5 and deposed that the workman was manager of the society in the year 1977 and he was intermediate absent from April, 1977 onward and the member of the committee made the complaint regarding his absence as the members of the Bank facing difficulties in the matter of loans and recoveries. He has stated that the members made appeal and written complaints to the respondent on which the officers of the Bank visited the village and found the workman absent. The witness has produced copy of complaint as Ex. M-5/1 as the said letter was handed over to the E.O. Palwal and his signatures are at point "A". The witness also confirmed that the proceeding book and record of the society as under the custody of the workman. He further argued

that the manager of the respondent Bank Shri Ram Kishan has also come as MW-6 and stated that he received the reports of E.O. Hodel and D.O. Palwal in respect of absence of the workman and he received Ex. M-6 from the E.O. Hodel. On this a show cause notice was sent to the workman by registered post which was returned un-served with the remarks of the postman. They are Ex. W-1 and Ex. M-4. He further argued that all the above witnesses have proved the case of the respondent of absence and his conduct. On the other hand the workman came in the witness box as WW-1 and stated that he fell ill in the year 1977 and sent the leave application which is Ex. W-1/3 under postal Certificate. The workman has also produced the medical certificate WW-1/7 and fitness certificate Ex. W-1/8. It is a new case for the respondent in the evidence because in the pleadings i.e. in the demand notice, claim statement, rejoinder the workman has taken no plea of illness which he has taken in his evidence. In the rejoinder he has simply stated that he was never absent from duty, which clears the case. In the rejoinder he stated that he was never absented from the duty and in his evidence he states that he was ill in the month of July, 1977 which are two different things. The respondent witness were not put any suggestion or question regarding the illness and the medical certificate in their cross-examination. He has stated in his cross-examination that he told his representative about the illness which he does not written in the demand notice or in the rejoinder. So the plea of the workman cannot be believed in these circumstances. Had this story been genuine the workman should have taken this plea in the demand notice claim statement and rejoinder. The workman produced two witnesses and they have stated in their statement that the workman was ill for 5 or 6 months in the village in the year 1977 whereas the workman stated that he was ill in July, 1977, so the story of the workman cannot be believed. The case of the respondent is very clear from the statement of present manager of the Bank Maindi Ram that the workman has not prepared the record of the said period and he has not signed the cash book for the said period. He further argued that the persons who has come to depose in the Court has no enmity to depose against him. So the workman was dismissed and the order of dismissal was fair and just.

The representative of the workman argued on this issue that the workman was appointed vide Exhibit M-3 in a regular service and he was confirmed,—vide Exhibit W-1/2. The applicant fell ill and sent the application WW-1/3 from 14th July, 1977 through UPC which is Exhibit W-1/4. The medical certificate was also sent which is Exhibit W-1/7 and fitness certificate Exhibit WW-1/8 was sent to the respondent but did not receive any letter from the respondent. The workman had completed one year of service and the dismissal of the workman is against the law and principles of natural justice and without hearing the workman. The respondent should have hold domestic enquiry in the matter and should have heard the workman. The enquiry made by the respondent were ex parte in which no opportunity was given to the workman. So the orders made by the respondent at the back of the workman cannot be sustainable.

After hearing the arguments of both the parties, and going though the file I am of the view that the arguments put forward by the respondent on the issue have some weight. The workman has taken a new plea of illness in the evidence and not before that and even that illness is not proved before me. His two witnesses WW-2 and WW-3 states that the workman was ill for 5 or 6 months in the village in the year 1977 and he was treated by the village doctors who gave the fitness certificate. Whereas the workman states in his statement that he was ill for one month. The story of the workman cannot be believed. So the issues are decided in favour of the respondent and against the workman, and the workman is not entitled for any relief, in the above circumstances.

This be read in answer to this reference.

Dated 19th June, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 1432 Dated 26th June, 1982

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Department, Chandigarh as required under section 15 of the I.D. Act.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.